

STATE OF MICHIGAN
COURT OF APPEALS

DIANE KAY WHITFIELD,

Plaintiff-Appellee,

v

LEON VIRGIL WHITFIELD,

Defendant-Appellant.

UNPUBLISHED

September 27, 2005

No. 254053

Genesee Circuit Court

LC No. 02-243054-DO

Before: Sawyer, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce. We affirm.

Defendant first argues that the trial court erred by awarding plaintiff \$13,000 as a result of defendant's 2002 charitable donation of approximately \$26,000. We disagree.

This Court reviews a trial court's factual findings for clear error. *McDougal v McDougal*, 451 Mich 80, 87; 545 NW2d 357 (1996); *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). The court's findings are presumptively correct and the burden is on the appellant to show clear error. *McDougal, supra*; *Gates v Gates*, 256 Mich App 420, 432; 664 NW2d 231 (2003). If the trial court's findings are not clearly erroneous, this Court must then decide whether the dispositional ruling was fair and equitable in light of the facts. *McDougal, supra*; *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992); *Moore, supra* at 655.

In general, the goal in distributing marital assets in a divorce is to reach an equitable distribution in light of all the circumstances. *Gates, supra* at 423. Among the relevant factors a trial court may consider when dividing the marital estate are general principles of equity. *Id.* at 424.¹ It is clear from the trial court's property division as a whole that the court sought to divide the marital property equally. The trial court disbelieved defendant's testimony concerning the

¹ Other relevant factors include: (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) ages of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties and (8) past relations and conduct of the parties. *Gates, supra* at 424.

large charitable donation and instead found that he gifted the property when the parties were separated in order to gain a personal tax advantage. Giving deference to the trial court's superior position to evaluate questions of witness credibility, *Thames v Thames*, 191 Mich App 299, 311; 477 NW2d 496 (1991), the trial court did not clearly err in finding that defendant's explanation concerning the timing and circumstances of this large donation was not credible, especially in light of his admission that plaintiff did not want to donate such a large sum of money.

In addition, it is apparent from the trial court's comments that its decision was properly calculated to achieve equity, rather than to punish defendant for any perceived wrongdoing. The trial court did not penalize defendant for improperly disposing of a marital asset in violation of its earlier temporary domestic relations order, although it could have done so under the terms of that order. Under the circumstances, the trial court's decision to award plaintiff \$13,000 as a result of defendant's substantial donation was not inequitable.

Defendant next argues that the trial court erred by awarding plaintiff \$300 a month in spousal support for three years. We disagree.

An award of spousal support is within the trial court's discretion and must be affirmed unless the appellate court is firmly convinced that it was inequitable. *Gates, supra* at 432; *Moore, supra* at 654-655. The main objective of spousal support is to balance the incomes and needs of the parties in a way that will not impoverish either party, and an award of support is to be based on what is just and reasonable under the circumstances of the case. *Id.* at 654. Among the factors that should be considered are: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the abilities of the parties to work; (4) the source and amount of property awarded to the parties; (5) the parties' ages; (6) the abilities of the parties to pay; (7) the present situation of the parties; (8) the needs of the parties; (9) the parties' health; (10) the prior standard of living of the parties and whether either is responsible for the support of others; (11) contributions of the parties to the joint estate; (12) a party's fault in causing the divorce; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity. *Gates, supra* at 435-436; *Ianitelli v Ianitelli*, 199 Mich App 641, 644; 502 NW2d 691 (1993); *Thames, supra* at 308.

The record reflects that the trial court properly weighed the relevant factors in deciding the issue of spousal support. The court gave particular consideration to the parties' respective incomes. Additionally, the court considered defendant's no-cost health care coverage compared to plaintiff's situation. Because plaintiff would no longer be covered under defendant's health care plan, she would not only incur additional expense for obtaining her own coverage, but would lose additional income she previously had been receiving for electing to waive health care coverage through her own employer. After determining that defendant's income would be greater even after redistributing a portion of his pension to plaintiff, the trial court awarded plaintiff spousal support of \$300 for a limited period of three years, in part to help offset the difference in her income and the added expense of obtaining her own health care coverage. The trial court's award was limited to three years, apparently in recognition that defendant would not be able to continue his appraisal business in the future. The trial court's factual findings relative to its spousal support decision are not clearly erroneous. Further, neither party will be impoverished by the award, which was intended to keep the parties on relatively equal footing while defendant continues his appraisal work. Under the circumstances, we are not firmly convinced that the spousal support award was inequitable.

Defendant lastly argues that the trial court erred when it ordered him to directly pay plaintiff \$709.20 a month until a qualified domestic relations order (QDRO) could be processed to enable plaintiff to begin receiving her share of defendant's pension. But other than providing a case citation for the general proposition that pension plans are regulated as a matter of federal law, defendant provides little discussion of this issue in his brief and fails to explain how the trial court's order, which is not directed at any pension plan funds, violates any provision of federal law. Where a party fails to sufficiently brief the merits of an allegation of error, or fails to provide supporting authority for his position, the issue may be deemed abandoned by this Court. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Under the circumstances, we find that the issue has been abandoned.

Affirmed.

/s/ David H. Sawyer

/s/ Michael J. Talbot

/s/ Stephen L. Borrello